

## COMMON INTEREST COMMUNITY BOARD

### MINUTES OF MEETING

The Common Interest Community Board met on December 2, 2010, at the Department of Professional and Occupational Regulation (DPOR), 9960 Mayland Drive, 2<sup>nd</sup> Floor, Board Room 2, Richmond, Virginia 23233.

The following members were present:

F. James Ahlberg  
Pamela Coerse  
Ronda S. DeSplinter  
Kimberly B. Kacani, Vice Chair  
Milton W. Matthews  
Douglas Rogers  
Scott Sterling  
Miyun Sung  
Lucia Anna Trigiani, Chair  
Katherine Waddell (arrived at 9:49 a.m.)

Board member Christiaan Melson was not in attendance.

DPOR staff present for all or part of the meeting included:

Mark N. Courtney, Deputy Director of LRD  
Nick Christner, Deputy Director of CID  
Trisha L. Henshaw, Executive Director  
Heather Gillespie, Ombudsman  
Mary Broz-Vaughan, Director of Communications,  
Legislation and Consumer Education  
Thomas K. Perry, Property Registration Administrator  
Jesstina Adelman, Program Analyst  
Betty C. Jones, Administrative Assistant  
Earlyne Perkins, Legal Analyst

Steven Jack from the Office of the Attorney General was present.

Finding a quorum of the Board present, Ms. Trigiani, Chair, called the **Call to Order** meeting to order at 9:36 a.m.

Ms. Trigiani introduced a new Board member, Douglas Rogers, who was appointed to serve as a citizen member, and announced that Christiaan Melson was appointed to serve as a common interest community manager on the Board. **Introduce New Board Members**

Ms. Coerse moved to approve the agenda. Mr. Ahlberg seconded the motion which was unanimously approved by: Ahlberg, Coerse, DeSplinter, Kacani, Matthews, Rogers, Sterling, Sung, and Trigiani.

**Approval of Agenda**

Ms. Kacani moved that the Board approve the minutes of the September 28, 2010, meeting as amended. Ms. DeSplinter seconded the motion which was unanimously approved by: Ahlberg, Coerse, DeSplinter, Kacani, Matthews, Rogers, Sterling, Sung, and Trigiani.

**Approval of Minutes**

Ms. Waddell arrived at 9:49 a.m.

**Arrival of Board Member**

Ms. Kacani moved that the Board approve the minutes of the October 19, 2010, Informal Fact Finding Conference. Mr. Matthews seconded the motion which was unanimously approved by: Ahlberg, Coerse, DeSplinter, Kacani, Matthews, Rogers, Sterling, Sung, Trigiani, and Waddell.

**Approval of Minutes**

Ms. Trigiani opened the floor for public comment. Ms. Jean Gorman, JKG Accounting, addressed the Board during the Public Comment Period. She expressed her concerns about the difficulty in obtaining training for her manager's license.

**Public Comment Period**

Mr. Carl Smith, General Manager for Bernard's Landing and President of South Hospital Management, addressed the Board during the Public Comment Period. Mr. Smith presented his present credentials and his past experience and inquired as to whether experience could reduce academic time and certification.

Ms. Trigiani transferred the Chair to Ms. Kacani and recused herself from the meeting.

**Transfer of Chair**

Regarding **File Number 2009-03713, Kensington Condominiums, LLC and Kensington II Condominiums, LLC**, the Board members reviewed the record of the Informal Fact-Finding Conference, which consisted of the investigative file, transcript and exhibits, and the Summary of the Informal Fact-Finding Conference, as well as the recommendation of the presiding Board member. Ms. Coerse moved to accept the Summary of the Informal Fact-Finding Conference as to the facts, and to find sufficient evidence that the Declarant's failure to establish the \$12,000 reserve fund as stipulated in the Public Offering Statement during the Declarant control period and failure to amend the Public Offering Statement is a violation of the Condominium Act and the Board's regulations.

**File Number 2009-03713, Kensington Condominiums, LLC and Kensington II Condominiums, LLC**

Mr. Ahlberg seconded the motion which was unanimously approved by: Ahlberg, Coerse, DeSplinter, Kacani, Matthews, Rogers, Sterling, Sung, and Waddell.

Ms. Waddell moved to accept the recommendation contained in the Summary of the Informal Fact-Finding Conference, and issue an Order requiring the Declarant to cease and desist from sales activity until Declarant presents evidence acceptable to the Board that the following terms are met:

1. Declarant shall update the application for registration to meet the requirements of the Code of Virginia and the regulations of the Board;
2. Declarant shall update the Public Offering Statement to meet the requirements of the Code of Virginia and the regulations of the Board with particular attention to the budget to ensure that the budget is adequate to fund association operations;
3. Declarant shall provide a copy of an updated, compliant Public Offering Statement to all current owners of the Condominium;
4. Declarant shall deposit the amount of \$12,000.00 with the Association, which can be used as the reserve; and
5. Declarant shall engage an independent accountant to conduct an accounting to determine the Declarant obligation with regard to assessments and bring the assessments current.

Failure to comply with the terms of the cease and desist order may result in a revocation of the registration in accordance with § 55-79.101 of the Code of Virginia.

Ms. Coerse seconded the motion. After discussion and upon recommendation by Board Counsel, Ms. Waddell withdrew her motion.

Ms. Waddell made a motion to amend the recommendation contained in the Summary of the Informal Fact-Finding Conference and issue an Order requiring the Declarant to cease and desist from sales activity until Declarant presents evidence acceptable to the Board that the following terms are met:

1. Declarant shall update the application for registration to meet the requirements of the Code of Virginia and the regulations of the

Board;

2. Declarant shall update the Public Offering Statement to meet the requirements of the Code of Virginia and the regulations of the Board with particular attention to the budget to ensure that the budget is adequate to fund association operations;
3. Declarant shall provide a copy of an updated, compliant Public Offering Statement to all current owners of the Condominium;
4. Declarant shall deposit the amount of \$12,000.00 with the Association, which can be used as the reserve; and

Failure to comply with the terms of the cease and desist order may result in a revocation of the registration in accordance with § 55-79.101 of the Code of Virginia.

Ms. Coerse seconded the motion which was unanimously approved by: Ahlberg, Coerse, DeSplinter, Kacani, Matthews, Rogers, Sterling, Sung, and Waddell.

As the presiding Board member, Ms. Trigiani was not present during the discussion or vote.

Ms. Trigiani returned to the meeting and resumed the position of Chair.

**Transfer of Chair**

The Board recessed from 10:21 a.m. until 10:30 a.m.

**Break**

Ms. Henshaw gave an update on the status to date of the regulatory review processes for several of the Board's regulatory packages.

**Update on  
Regulatory Review  
Processes**

- The Common Interest Community Ombudsman Regulations are currently undergoing review by the Governor's office.
- The Common Interest Community Manager Regulations containing the employee certification provisions are currently undergoing review by the Governor's office.
- The Condominium Regulations (fast-track) governing the return of bonds and letters of credit are currently undergoing review by the Governor's office.

Based on guidance provided by the Board at the September meeting, Ms. Henshaw requested the Board adopt a Notice of Intended Regulatory Action (NOIRA) for the Condominium Regulations in order

**Adoption of NOIRA  
for CIC  
Condominium**

to begin the review process for these regulations.

### **Regulations**

Ms. Waddell moved to adopt the filing of the Notice of Intended Regulatory Action for the Common Interest Community Board Condominium Regulations. Ms. Coerse seconded the motion which was unanimously approved by: Ahlberg, Coerse, DeSplinter, Kacani, Matthews, Rogers, Sterling, Sung, Trigiani, and Waddell.

Ms. DeSplinter made a motion that a Committee should be formed to review the Condominium Regulations. Mr. Ahlberg seconded the motion which was unanimously approved by: Ahlberg, Coerse, DeSplinter, Kacani, Matthews, Rogers, Sterling, Sung, Trigiani, and Waddell.

Ms. Trigiani selected Christiaan Melson to Chair the Condominium Regulatory Review Committee. After discussion, Ms. DeSplinter moved to have the following Board members serve on the committee: Kimberly Kacani, Scott Sterling, and Miyun Sung. Public members who will be invited to serve are: Robert Diamond, attorney with Reed Smith; Thomas Colucci, attorney with Walsh Colucci; Michael Inman, attorney with Inman and Strickler; Mark Kinser, developer with Unlimited Construction, Inc.; David Mercer, attorney with Mercer Trigiani; and Michelle Thompson, with the Office of Consumer Affairs of Fairfax County. Mr. Ahlberg seconded the motion which was unanimously approved by: Ahlberg, Coerse, DeSplinter, Kacani, Matthews, Rogers, Sterling, Sung, Trigiani, and Waddell.

Ms. Henshaw previously informed the Board that due to the passage of Senate Bill 474 from the 2010 Session of the General Assembly, all regulatory boards at DPOR were required to promulgate regulations concerning the issuance of temporary licenses. At the June 3, 2010 meeting, the Board approved emergency regulations to address the issuance of temporary common interest community manager licenses. Ms. Henshaw informed the Board that the Administration recently informed DPOR that emergency regulations were only required if a regulatory board would issue a temporary license. Since the Board will not be issuing temporary licenses, the emergency regulations previously adopted by the Board are not required. In accordance with the direction provided by the Administration, Ms. Henshaw requested that the Board adopt a motion to withdraw those regulations.

### **Consideration of Withdrawal of CIC Manager (Emergency) Temporary Licensure Regulations**

Ms. Kacani made a motion to authorize staff to withdraw the common interest community manager temporary licensure emergency regulations. Mr. Matthews seconded the motion which was unanimously approved by: Ahlberg, Coerse, DeSplinter, Kacani,

Matthews, Rogers, Sterling, Sung, Trigiani, and Waddell.

Ms. Henshaw distributed a draft of the Common Interest Community Board Newsletter. The Board reviewed and discussed the material in the newsletter. Ms. Trigiani requested the Board members to submit any comments to Ms. Henshaw within the next two weeks. Ms. Trigiani suggested that staff send post cards to regulants, General Assembly members, real estate board members, and ask Community Associations Institute to put a link on their website to the newsletter. Ms. Trigiani suggested a disclaimer be added to the newsletter indicating that the Ombudsman's Office cannot provide a legal interpretation but can provide a non-binding explanation of laws and regulations governing associations.

**Review Draft of  
Inaugural CICB  
Newsletter**

Ms. Henshaw gave an update on the status of the Consent Order and the Cease and Desist Order entered in the matter of File Number 2010-04291 for Alexander Properties, Inc. The monetary penalties and the board costs due in September have not been paid and the matter has been referred for collection. The terms of the Cease and Desist Order must be complied with by December 31, 2010.

**Update on Status  
of Consent Order  
and Cease and  
Desist Order for  
File Number 2010-  
04291**

Ms. Henshaw provided the Board with a draft Guidance Document 4, Definition of "Employee" as used in § 54.1-2347.A.2 of the Code of Virginia, prepared by staff. She indicated that clarification is needed to determine whether someone who claims the "employee" exemption is a bona fide employee of the association. Staff recommended that the Board adopt a guidance document that incorporates Internal Revenue Service Ruling 87-41. This Ruling includes 20 factors that aid in determining whether an individual is an employee.

**Discussion of  
Definition of  
"Employee" as it  
Applies to  
54.1-2347.A.2**

Mr. Matthews made a motion to approve the draft Guidance Document 4 form attaching a copy of the Internal Revenue Service Revenue Ruling 87-41. Ms. Coerse seconded the motion which was unanimously approved by: Ahlberg, Coerse, DeSplinter, Kacani, Matthews, Rogers, Sterling, Sung, Trigiani, and Waddell.

The following resolution was presented for consideration by the Board and read by Ms. Kacani.

**Consideration of  
Resolutions for  
Service**

**Resolution for**

**R. Lee Merritt**

WHEREAS, **R. Lee Merritt**, did faithfully and diligently serve as a member of the Virginia Common Interest Community Board from 2008 to

2010;

WHEREAS, **R. Lee Merritt**, did devote generously of his time, talent and leadership to the Board;

WHEREAS, **R. Lee Merritt**, did endeavor at all times to render decisions with fairness and good judgement in the best interest of the citizens of the Commonwealth and these professions; and

WHEREAS, the Virginia Common Interest Community Board wishes to acknowledge its gratitude for devoted service of a person who is held in high esteem by the members of the Board and the citizens of the Commonwealth;

NOW THEREFORE BE IT RESOLVED, by the Virginia Common Interest Community Board this second day of December 2010 that **R. Lee Merritt**, be given all honors and respect due him for his outstanding service to the Commonwealth and its citizens; and

BE IT FURTHER RESOLVED, that this Resolution be presented to him and be made a part of the official minutes of the Board so that all may know of the high regard in which he is held by this Board.

Ms. Kacani made a motion to adopt the resolution. Mr. Matthews seconded the motion which was unanimously approved by: Ahlberg, Coerse, DeSplinter, Kacani, Matthews, Rogers, Sterling, Sung, Trigiani, and Waddell.

The following resolution was presented for consideration by the Board and read by Mr. Matthews.

**Resolution for**

**Douglas M. Kleine**

WHEREAS, **Douglas M. Kleine**, did faithfully and diligently serve as a member of the Virginia Common Interest Community Board from 2008 to 2010;

WHEREAS, **Douglas M. Kleine**, did devote generously of his time, talent and leadership to the Board;

WHEREAS, **Douglas M. Kleine**, did endeavor at all times to render decisions with fairness and good judgement in the best interest of the citizens of the Commonwealth and these professions; and

WHEREAS, the Virginia Common Interest Community Board wishes to acknowledge its gratitude for devoted service of a person who is held in high esteem by the members of the Board and the citizens of the Commonwealth;

NOW THEREFORE BE IT RESOLVED, by the Virginia Common Interest Community Board this second day of December 2010 that **Douglas M. Kleine**, be given all honors and respect due him for his outstanding service to the Commonwealth and its citizens; and

BE IT FURTHER RESOLVED, that this Resolution be presented to him and be made a part of the official minutes of the Board so that all may know of the high regard in which he is held by this Board.

Mr. Matthews made a motion to adopt the resolution. Ms. DeSplinter seconded the motion which was unanimously approved by: Ahlberg, Coerse, DeSplinter, Kacani, Matthews, Rogers, Sterling, Sung, Trigiani, and Waddell.

The Board discussed the Training Program Review Committee membership. The Board agreed by consensus that Mr. Sterling serve as Chair of the Committee and Mr. Rogers be added as a member.

**Discussion of  
Training Program  
Review Committee  
Membership**

Ms. Henshaw discussed the results of a common interest community manager survey that was distributed to licensed common interest community managers. The survey was conducted to gather data about the current and anticipated training and experience of employees of licensed common interest community managers based on concerns that have been expressed regarding the ability of employees of common interest community managers to meet the Board's training requirements. This survey was provided for information purposes only.

**Update on Results of  
CIC Manager  
Survey**

Ms. Trigiani provided information regarding the upcoming legislative session as it pertains to the Board's programs. This included a report from the Common Interest Community Work Group of the Virginia Housing Commission. Ms. Coerse advised the Board of changes to the Time-Share Act that will be presented for consideration this Session.

**Legislative Forecast**

Ms. Gillespie provided the Board with the 2009-10 Annual Report on the Office of the Common Interest Community Ombudsman and provided a handout on developing a better understanding of the Office of the Common Interest Community Ombudsman. She discussed the inquiries and complaints, education and outreach, constituent

**Ombudsman's  
Report**



expectations, legal developments, and statutory authority related to the Ombudsman.

Ms. Henshaw provided a copy of statistical information on common interest community applications and licenses, including the number of new applications filed, percentage of applications received, the regulant population for September 2010, and the number of telephone calls and e-mail messages received in the Board office. In addition, the chart reflects the number of applications received, reports/renewals, and condominium and time-share filings are down, and the regulant population is up compared with last year.

**Licensing/  
Registration  
Statistics**

Ms. Henshaw presented to the Board the most recent financial statement for informational purposes.

**Board Financial  
Statements**

The Board previously requested that staff compile a calendar of the common interest community-related events and dates that staff and the Ombudsman's office attends. The requested information was provided to the Board with the agenda package for information purposes only.

**Staff Event  
Calendar**

The Board members were reminded to complete their conflict of interest forms and travel vouchers.

**Conflict of Interest  
and Travel Voucher  
Forms**

There being no further business, the meeting was adjourned at 12:29 p.m.

**Adjourn**

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Lucia Anna Trigiani, Chair

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Gordon N. Dixon, Secretary